

Effective 5/13/2014

13-43-205 Advisory opinion.

- (1) A local government, private entity, or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion:
 - (a) from a neutral third party to determine compliance with:
 - (i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;
 - (ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and
 - (iii) Title 11, Chapter 36a, Impact Fees Act; and
 - (b) at any time before:
 - (i) a final decision on a land use application by a local appeal authority under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;
 - (ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated to hear the issue that is the subject of the request for an advisory opinion; or
 - (iii) the enactment of an impact fee, if the request for an advisory opinion is a request to review and comment on a proposed impact fee facilities plan or a proposed impact fee analysis as defined in Section 11-36a-102.
- (2) A private property owner may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral third party to determine if a condemning entity:
 - (a) is in occupancy of the owner's property;
 - (b) is occupying the property:
 - (i) for a public use authorized by law; and
 - (ii) without colorable legal or equitable authority; and
 - (c) continues to occupy the property without the owner's consent, the occupancy would constitute a taking of private property for a public use without just compensation.
- (3) An advisory opinion issued under Subsection (2) may justify an award of attorney fees against a condemning entity in accordance with Section 13-43-206 only if the court finds that the condemning entity:
 - (a) does not have a colorable claim or defense for the entity's actions; and
 - (b) continued occupancy without payment of just compensation and in disregard of the advisory opinion.

Amended by Chapter 59, 2014 General Session